

Syllabus

IN THE MATTER OF

ENGLISHTOWN CUTLERY, LTD. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5492. Complaint, May 6, 1947—Decision, Apr. 4, 1950

The British Royal coat of arms, which is one of the most widely known national insignia in the world and is unique in certain respects, is the property of the British Government, and the right to its use is limited to said Government and its functions, to the British royal family and to Royal Warranty Holders and members of the Royal Warranty Holders Association, namely, concerns and individuals who as a result of long-continued, faithful service to members of the British royal family, have been granted by said family special permission to use said coat of arms in recognition of such service.

England has been a seat for the manufacture of cutlery for several centuries, and English cutlery has been noted for its excellence; and a substantial portion of the purchasing public, by reason of such reputation, prefers it.

Where a domestic corporation and its president, who controlled its affairs, engaged in New Jersey in the manufacture and advertising of knives, spoons, forks, and other cutlery, and in the competitive interstate sale and distribution thereof—

Made use on certain of their cutlery products, and in their advertising matter in newspapers and other media of general circulation, of a heraldic device or design which simulated the British coat of arms, including the rampant lion on the left and the rampant unicorn on the right, its most distinguishing features, and thereby indicated to the purchasing public and especially to persons of English blood and origin and those with a preference for cutlery and similar products designed and made in England, that said products were there made and were offered for sale under the authority of the Royal Warrant and Royal Warranty Holders Association;

The facts being that neither of them had ever rendered any conspicuous service to the British Government or royal family and neither said Government nor family, or any member of the latter, had granted or consented to their use of the British coat of arms; any use thereof or, of any part by them was without authority, warrant or consent of the rightful owner and users; said corporation was not a British company or association and had no British connections; and the cutlery products concerned were not designed or made in or brought from England, but on the contrary, were made in New Jersey:

With tendency and capacity to mislead and deceive substantial numbers of the purchasing public and thereby to induce them to purchase substantial quantities of said products; whereby trade was unfairly diverted from competitors who do not use such false and misleading representations, to their prejudice; and with effect of placing in the hands of retailers and other distributors means whereby they might deceive members of the purchasing public:

Complaint

46 F. T. C.

Held. That such acts and practices, under the circumstances set forth, were to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce and unfair methods of competition therein.

While respondents at the conclusion of the hearings in the foregoing matter expressed a willingness, in connection with said use of the insigne which were found to resemble and simulate the English coat of arms, to display the words "made in U. S. A.," in conspicuous letters and in close proximity to such insigne, the Commission was of the opinion that to sanction the unauthorized use in this country of such emblem or imitation thereof would be to ignore the spirit and purport of the International Convention of June 2, 1934, under which the United States, Great Britain, and other signatory States undertook to prevent, for the benefit of their respective nationals, unauthorized use of trade-marks, commercial names, indications of origin and, when such use was liable to cause confusion as to the origin of the product, of State coats of arms; and was of the further view that an absolute prohibition as to use of the insigne connoting royal warrant was necessary to eliminate the deception engendered by the use of such emblem under the circumstances involved.

As respects charges of the complaint pertaining to respondents' use in the advertising of the corporate name "English Cutlery, Ltd.," and the word "Englishtown" as a brand or products name when used alone or in combination with a circular design depicting a coronet, or in conjunction with a simulation of a framed portrait entitled "Dover," which, it was alleged, also conveyed the impression that respondents' cutlery was designed and made in England: While members of the purchasing public testified to impressions respecting British origin in the proceeding, as engendered by the advertising in question, such impressions obviously were derived in some measure from the presence in the advertising of the insigne which simulated the British coat of arms, and the record did not disclose with the degree of certainty deemed desirable by the Commission in such matters, whether, if used in the absence of said insigne, said challenged practices had the alleged capacity to mislead; and was accordingly of the opinion that such additional charges should be dismissed without prejudice.

Before *Mr. Clyde M. Hadley*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Jacob M. Zinaman, of New York City, for Englishtown Cutlery, Ltd., Norman J. Mercer and Edward W. Ginsburg.

Mr. Simon J. Trosty, of New York City, for Joseph Berger.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Englishtown Cutlery, Ltd. (Inc.), a corporation, Norman J. Mercer, Joseph Berger, and Edward W. Ginsburg, individually, and as officers of English-

town Cutlery, Ltd (Inc.), hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Englishtown Cutlery, Ltd. (Inc.) is a corporation organized and established under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at Englishtown, N. J. Said respondent also maintains a business office at 230 Fifth Avenue, in the city of New York, N. Y. Respondents Norman J. Mercer, Joseph Berger, and Edward W. Ginsburg are president, vice president, and secretary, respectively, of respondent corporation Englishtown Cutlery, Ltd. (Inc), with their office and principal place of business located at Englishtown, N. J. Said individual respondents direct, and have directed, the activities of respondent corporation, and formulate and control and have formulated and controlled, its policies and affairs, including the conduct of sales and the character of advertising representations made in connection therewith.

PAR. 2. The respondents are now and for more than 1 year last past have been engaged in the business of manufacturing, advertising, selling, and distributing in commerce, cutlery, including knives, spoons, forks, and other kitchen and table cutlery.

The respondents cause and have caused their said products, when sold, to be transported from their said places of business in the States of New Jersey and New York to purchasers located at various points in other States of the United States and in the District of Columbia. Respondents maintain and at all times herein mentioned have maintained a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid the respondents are now and at all times mentioned herein have been in substantial competition with other corporations, partnerships, firms, and individuals engaged in the manufacture, sale, and distribution of cutlery, including such articles as those sold by the respondents, in commerce among and between the various States of the United States and the District of Columbia.

PAR. 4. The word or term "Limited," as applied to or as associated with a business company or enterprise, including its abbreviation "Ltd.," is English in its origin, application, and significance.

Complaint

46 F. T. C.

Neither the word "Limited" nor its abbreviation "Ltd." is known to or employed in the American system under which the conventional corporation is chartered.

PAR. 5. The royal arms of the Government of Great Britain with its lion and unicorn rampant supporting the emblems of England, Scotland, and Ireland combined in a shield is one of the most widely known national insignias in the world. Said coat of arms of Great Britain is the only one in the world employing the figure of the legendary single-horned unicorn, originally typifying Scottish arms. The British royal coat of arms is the property of the British Government and the right to its use including the use of pictorial representations thereof is limited to the British Government and its functions, to the British royal family, and to royal warranty holders and members of the Royal Warranty Holders Association, that is to say, those corporations, partnerships, and individuals, who as a result of long-continued, faithful service to members of the British royal family, have been granted by said family special permission so to use said coat of arms in recognition of such service.

A crown is an official adornment worn on the head by a sovereign to symbolize royalty and is an expression of the prerogatives of a monarch. There is only one major power in the world today in which the sovereign wears a crown, namely, Great Britain. A coronet is a lesser crown, originating early in England and worn by dukes, marquises, and earls, and likewise symbolizing British royalty.

"Old English" text or style of lettering or printing is likewise distinctly English in origin and suggestion. It employs a distinctive type of black lettering, originally done by hand by skilled draftsmen, and is based upon the Old English or Anglo-Saxon alphabet.

Dover is an English city located on a bay opening into the English Channel a short distance southeast of London. It is one of the oldest and best known cities in England, a celebrated British naval base and steamship port, and has been termed by historians the "Key to England." The Romans and Saxons had forts there. The suggestion of the name "Dover" is distinctly English, historically and currently.

England has been a seat for the manufacture of cutlery since the fourteenth century. English cutlery is noted for its excellency and there is a substantial portion of the purchasing public, who, by reason of the reputation of such cutlery, has a preference for it.

PAR. 6. In the course and conduct of their said business and for the purpose of inducing the purchase of their said cutlery products, the respondents have falsely represented and implied that their cutlery was designed, manufactured, and made in England. Said false and

misleading representations and implications have been and are now being made by various means including the use of advertising matter published in newspapers of general circulation throughout the United States, and by other advertising media, all of general circulation. Among, but not all-inclusive of the deceptive acts and practices of respondents are the following:

The corporate name under which respondent company was granted a charter by the State of New Jersey concludes with the term "Inc." The manufacturing plant operated by respondents is located in the State of New Jersey at a small city called Englishtown. In advertising material of general circulation as aforesaid respondents have printed and represented the name of respondent company in heavy Old English type so as to read "Englishtown Cutlery Ltd.," the term "Inc." being omitted from the name of respondent company. Likewise omitted, from such advertising in connection with the printing of the company name, is any reference to Englishtown in the State of New Jersey. In advertising material in which the name of respondent company is printed in Old English as "Englishtown Cutlery, Ltd." appears a circular design simulating the British coat of arms consisting of the English lion and unicorn rampant supporting a shield on which appears the letter "E" in Old English, this in turn under the word "Englishtown," carried in Old English. In close proximity to this design appears a representation of a pennant reading "Englishtown Brands," the word "Englishtown" again printed in Old English. Another circular design in the same group depicts a coronet. In other advertising matter of general circulation in connection with the use of the name "Englishtown Cutlery, Ltd.," printed in Old English as aforesaid, is a simulation of a framed portrait of dinnerware entitled "'Dover' by Englishtown," the word "Englishtown" again printed in Old English type. In no instance in any of said advertising material is the name of respondent company printed in other than Old English type.

PAR. 7. Said designations, descriptions, and representations herein set out including the use by respondent company, in Old English type, of the name "Englishtown Cutlery, Ltd." a pictorial simulation of the British coat of arms, and of a crown, and the use of the word "Dover," as employed by respondents in describing their said products sold in interstate commerce, convey an English meaning, implication, and suggestion, and indicate to the purchasing public, especially persons of English blood and origin, and to other persons having a preference for cutlery or similar products designed and manufactured in England, that said products were designed, manufactured, and made in

Complaint

46 F. T. C.

England, and by and upon authority of royal warranty holders and members of the Royal Warranty Holders Association, when in truth such is not the fact.

Respondents Englishtown Cutlery, Ltd., and Norman J. Mercer, Edward W. Ginsburg, and Joseph Berger have not rendered any conspicuous service to the British Government or to the British royal family, and neither the British Government nor British royal family or any member thereof has ever granted or consented to the use by said respondents of the British coat of arms, and any use thereof, or of any part thereof, by said respondents is without authority, warrant, or consent of the rightful owners and the users thereof.

Respondent company is not a British company or association and has no British connections but is a corporation created by the laws of the State of New Jersey. None of the cutlery products sold by respondents was designed or manufactured in or came from England but on the contrary all of such cutlery products advertised and sold by respondents were made in the State of New Jersey.

PAR. 8. The said representations of respondents are false and misleading and have had and do have a tendency and capacity to mislead and deceive substantial numbers of the purchasing public into the erroneous and mistaken belief that the cutlery, including knives, forks, spoons, kitchen, and tableware so advertised and sold by respondents is manufactured by and with the authority of the British Government, the royal British family and the British royalty holders, and is designed, manufactured, and made in England and imported from England, when such is not the fact. The said representations of respondents further have had and do thereby have the capacity and tendency to induce members of the purchasing public by reason of the erroneous belief so engendered to purchase substantial quantities of respondents' said products. As a result, trade has been unfairly diverted to respondents from competitors who are engaged in the sale of merchandise like that sold by respondents in commerce in and among the various States of the United States and in the District of Columbia but who do not use such false and misleading representations. Said acts and practices thereby prejudice and injure competitors who do not misrepresent like products manufactured and sold by them, and likewise place in the hands of retail dealers and other distributors a means whereby they may deceive members of the purchasing public.

PAR. 9. The above alleged acts and practices of respondent are all to the prejudice and injury of the public and respondents' competitors, and constitute unfair methods of competition in commerce and

755

Findings

unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 6, 1947, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of joint answer to the complaint by the corporate respondent and Norman J. Mercer and Edward W. Ginsburg, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore designated by it and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, joint answer of the respondents Englishtown Cutlery, Ltd., Norman J. Mercer, and Edward W. Ginsburg, testimony and other evidence, the recommended decision of the trial examiner and exceptions thereto, and briefs in support of and in opposition to the allegations of the complaint (oral argument not having been requested); and the Commission, having duly considered the matter and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Englishtown Cutlery, Ltd., is a New Jersey corporation with its office and principal place of business located at Englishtown, N. J., and with a business office at 280 Fifth Avenue, New York, N. Y. Respondent Norman J. Mercer is the president of said corporation, with his office also at 280 Fifth Avenue, New York, N. Y., and formulates and controls its affairs, including the conduct of sales and the character of advertising representations made in connection therewith.

Respondent Joseph Berger ceased to be vice president of corporate respondent on December 4, 1945, and respondent Edward W. Ginsburg ceased to be secretary thereof on March 7, 1946.

PAR. 2. Respondents Englishtown Cutlery, Ltd., and Norman J. Mercer are now, and for more than 1 year last past have been, engaged

Findings

46 F. T. C.

in the manufacture, advertising, sale, and distribution in commerce of cutlery, including knives, spoons, forks, and other kitchen and table cutlery. Respondents cause their products, when sold, to be transported from their said places of business to purchasers in other States and in the District of Columbia and maintain a course of trade therein in commerce between and among the various States of the United States and in the District of Columbia. Respondents compete with other corporations, firms, and individuals engaged in the sale and distribution, in interstate commerce, of similar products.

PAR. 3. The royal arms of the Government of Great Britain with its lion and unicorn rampant supporting the emblems of England, Scotland, and Ireland combined in a shield is one of the most widely known national insignia in the world. Said coat of arms of Great Britain is the only one in the world employing the figure of the legendary single-horned unicorn, originally typifying Scottish arms. The British royal coat of arms is the property of the British Government and the right to its use, including the use of pictorial representations thereof, is limited to the British Government and its functions, to the British royal family, and to royal warranty holders and members of the Royal Warranty Holders Association, that is to say, those corporations, partnerships, and individuals, who as a result of long-continued, faithful service to members of the British royal family, have been granted by said family special permission so to use said coat of arms in recognition of such service.

The United States and Great Britain are, along with other countries, members of a "Union for the Protection of Industrial Property," through an international convention signed in London, June 2, 1934, and ratified by the United States June 27, 1935, by which the signatory states undertake to prevent, for the benefit of their respective nationals, unauthorized use of trade-marks, commercial names, indications of origin and, when such use is liable to cause confusion as to the origin of the product, of state coats of arms.

PAR. 4. England has been a seat for the manufacture of cutlery for several centuries. English cutlery has been noted for its excellence and a substantial portion of the purchasing public, by reason of such reputation, have a preference for it.

PAR. 5. Respondents Englishtown Cutlery, Ltd., and Norman J. Mercer, on certain of their cutlery products and in advertising matter published in newspapers and in other media of general circulation throughout the United States, for the purpose of inducing the purchase of their cutlery products, have used a depiction of a heraldic device or design which resembles and simulates the British coat of

Arms, including its most distinguishing features, the rampant lion on the left and the rampant unicorn on the right.

PAR. 6. The pictorial simulation of the British coat of arms or British royal arms as employed by said respondents in describing and designating their cutlery products sold in interstate commerce conveys an English meaning, implication, and suggestion, and indicates to the purchasing public, especially persons of English blood and origin and to others having a preference for cutlery and similar products designed and manufactured in England, that said products were made in England and are offered for sale under the authority of the royal warrant and the Royal Warranty Holders Association.

PAR. 7. In truth and in fact, none of the respondents herein has ever rendered any conspicuous service to the British Government or to the British royal family, and neither the British Government nor the British royal family or any member thereof has ever granted or consented to the use by respondents of the British coat of arms; and any use thereof, or of any part thereof, by respondents is without authority, warrant, or consent of the rightful owners and users thereof.

The respondent corporation is not a British company or association and has no British connections, but is a corporation created by the laws of the State of New Jersey. The cutlery products thus sold by respondents Englishtown Cutlery, Ltd., and Norman J. Mercer were not designed or manufactured in or brought from England, but on the contrary were made in the State of New Jersey.

PAR. 8. The aforesaid representations as used by the respondents Englishtown Cutlery, Ltd., and Norman J. Mercer are false and misleading and have had and do have the tendency and capacity to mislead and deceive substantial numbers of the purchasing public into the erroneous and mistaken belief that the cutlery, including knives, forks, spoons, kitchen, and tableware so designated, advertised and sold by respondents is manufactured by and with the authority of the British Government, the royal British family and the Royal Warranty Holders Association, and is designed, manufactured and made in England and imported from England, when such is not the fact. The said representations further have had and do thereby have the capacity and tendency to induce members of the purchasing public, by reason of the erroneous belief so engendered, to purchase substantial quantities of said respondents' cutlery. As a result, trade has been unfairly diverted to said respondents from competitors who are engaged in the sale of like merchandise in commerce in and among the various States of the United States and in the District of Columbia but who do

Conclusion

46 F. T. C.

not use such false and misleading representations. Said acts and practices thereby prejudice and injure competitors who do not misrepresent like products manufactured and sold by them, and likewise place in the hands of retail dealers and other distributors a means whereby they may deceive members of the purchasing public.

PAR. 9. In connection with future use of the insigne herein found to resemble and simulate the British coat of arms, said respondents, at the conclusion of the hearings, expressed a willingness to display the words "Made in U. S. A." in conspicuous letters and in close proximity to such insigne. To sanction unauthorized use in this country of such emblem or an imitation thereof would be to ignore the spirit and purport of the International Convention of June 2, 1934, referred to hereinabove, and the Commission is of the further view that an absolute prohibition as to use of the insigne connoting royal warrant is necessary to eliminate the deception engendered by the use of such emblem under the circumstances here.

CONCLUSION

The aforesaid acts and practices of the respondents Englishtown Cutlery, Ltd., and Norman J. Mercer, as herein found, are to the prejudice and injury of the public and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Other charges of the complaint pertain to respondents' use in the advertising of the corporate name "Englishtown Cutlery, Ltd.," and the word "Englishtown" as a brand or product name when used alone or in combination with a circular design depicting a coronet, or in conjunction with a simulation of a framed portrait entitled "Dover," it being alleged that such use also conveys the impression that respondents' cutlery is designed and manufactured in England. The impressions respecting British origin which the members of the purchasing public testifying as witnesses in this proceeding affirm may be engendered by respondents' advertising obviously were derived in some measure from the presence in such advertising of the insigne simulating the British coat of arms. The record in this proceeding does not disclose, with the degree of certainty deemed desirable by the Commission in these matters, whether, if used in the absence of said insigne, the practices to which such additional charges pertain have the capacity to mislead as alleged in the complaint. In the circumstances the Commission is of the opinion that such additional charges should be dismissed without prejudice.

755

Order

The evidence does not show that respondents Joseph Berger and Edward W. Ginsburg were responsible for the acts and practices which are the subjects of this proceeding, and accordingly the charges of the complaint are being dismissed with respect to said respondents.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the joint answer of the respondents Englishtown Cutlery, Ltd., a corporation, Norman J. Mercer, and Edward W. Ginsburg, testimony and other evidence introduced before a trial examiner theretofore duly designated by it, recommended decision of the trial examiner and exceptions thereto, and briefs in support of and in opposition to the complaint (oral argument not having been requested) ; and the Commission having made its findings as to the facts and its conclusion that the respondents Englishtown Cutlery, Ltd., a corporation, and Norman J. Mercer have violated the provisions of the Federal Trade Commission Act:

It is ordered, That Englishtown Cutlery, Ltd., a corporation, and its officers, and Norman J. Mercer, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of their cutlery products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using on their products or in advertising any pictorial representation or depiction of the British royal arms or any simulation thereof; or otherwise representing, directly or by implication, that they are holders of a royal warrant authorizing them to display the British royal arms on their products or in their advertising or that cutlery products made in the United States are manufactured in the British Isles.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondents Joseph Berger and Edward W. Ginsburg.

It is further ordered, That the allegations of the complaint pertaining to use in the advertising of the corporate name, "Englishtown Cutlery, Ltd.," and the word "Englishtown" as a brand or product name when used alone or in combination with a circular design depicting a coronet or in conjunction with a simulation of a framed portrait entitled "Dover" be, and the same are hereby, dismissed without

Order

46 F. T. C.

prejudice to the right of the Commission to take such further action in the future as the then existing circumstances may warrant.

It is further ordered, That the respondents Englishtown Cutlery, Ltd., and Norman J. Mercer shall, within 60 days from the date of service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Complaint

IN THE MATTER OF
LADY CAROLE COATS, INC. ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF AN ACT OF CONGRESS APPROVED OCT. 14, 1940

Docket 5664. Complaint, June 14, 1949—Decision, Apr. 4, 1950

Where a corporation and its president who controlled it and was directly responsible for all its acts and practices, engaged in the manufacture for introduction into commerce, and in the interstate sale and distribution of ladies' coats which were composed in whole or in part of wool, reprocessed wool or reused wool, as defined in the Wool Products Labeling Act of 1939, and were thus subject to the provisions of said act and the rules and regulations promulgated thereunder—

Sold misbranded coats which were composed (a) in whole of reprocessed or reused wool, (b) in part of such wool and in part of viscose rayon, and (c) in part of such wool and in part of cotton, and did not have on or affixed thereto the required stamp, tag, label, or other means of identification showing the percentage of the total fiber weight of "wool," "reprocessed wool," "reused wool," fiber other than wool, and the other information called for by said act and rules, but, on the contrary, had affixed thereto stamps, tags, or labels which showed their fiber content as being "100% wool":

Held, That such acts and practices in the manufacture, sale, transportation, and distribution in commerce of misbranded wool products, were in violation of the provisions of the Wool Products Labeling Act of 1939, and the rules and regulations promulgated thereunder, and were to the prejudice and injury of the public, and constituted unfair and deceptive acts and practices in commerce within the meaning of the Federal Trade Commission Act.

Before *Mr. John L. Hornor*, trial examiner.

Mr. Jesse D. Kash for the Commission.

Mr. Louis H. Solomon, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission having reason to believe that Lady Carole Coats, Inc., a corporation, and Max Indig, individually and as an officer of Lady Carole Coats, Inc., hereinafter referred to as respondents, have violated the provisions of said acts and rules and regulations promulgated under the Wool Products Labeling Act of 1939, and it appearing to the Commission that a proceeding by it in respect thereof would be in the

Complaint

46 F. T. C.

public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Lady Carole Coats, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 252 West Thirty-eighth Street, New York, N. Y.

Respondent Max Indig is president of respondent Lady Carole Coats, Inc., with his office and principal place of business located at 252 West Thirty-eighth Street, New York, N. Y. This individual dominates the affairs of corporate respondent and is responsible for its acts and practices, including those hereinafter referred to. Respondents Lady Carole Coats, Inc., a corporation, and Max Indig are engaged in the manufacture for introduction and in the introduction into commerce and in the sale, transportation, and distribution in commerce of wool products as such products are defined in the Wool Products Labeling Act of 1939, as "commerce" is defined in said act and in the Federal Trade Commission Act.

PAR. 2. Respondents' said wool products are composed in whole or in part of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939, and such products are subject to the provisions of said act and the rules and regulations promulgated thereunder. Since January 15, 1941, respondents have violated the provisions of said act and said rules and regulations in the manufacture for introduction, and in the introduction into commerce and in the sale, transportation, and distribution of said wool products in said commerce, by causing said wool products to be misbranded within the intent and meaning of said act and said rules and regulations.

PAR. 3. Among the wool products manufactured for introduction into commerce by respondents and introduced into commerce, sold, transported, and distributed in commerce by respondents are ladies' coats. Exemplifying respondents' practice of violating said act and the rules and regulations promulgated thereunder is their misbranding of the aforesaid wool products in violation of the provisions of said act and the said rules and regulations by failing to affix to said wool products a stamp, tag, label, or other means of identification, or a substitute in lieu thereof, as provided by said act, showing (a) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said per centum by weight of such fiber was 5 per centum or more, and (5) the aggregate of all other fibers;

(*b*) the maximum percentage of the total weight of the wool product of nonfibrous loading, filling, or adulterating matter; (*c*) the percentages in words and figures plainly legible by weight of the wool content of such wool product where said wool product contains a fiber other than wool; (*d*) the name of the manufacturer of the wool product, or the manufacturer's registered identification number and the name of a seller or reseller of the product as provided for in the rules and regulations promulgated under such act, or the name of one or more persons subject to section 3 of said act with respect to such wool product.

The misbranded wool products referred to above were introduced, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, by each of the respondents.

PAR. 4. The aforesaid acts, practices, and methods of the respondents, as alleged herein, were and are in violation of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, and by virtue of the authority vested in it by said acts, the Federal Trade Commission on June 14, 1949, issued and subsequently served upon the respondents named in the caption hereof its complaint, charging said respondents with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of those acts. After the filing of the respondents' answer, testimony, and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the respondents' answer thereto, the testimony and other evidence, the trial examiner's recommended decision and brief of counsel in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Lady Carole Coats, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 252 West Thirty-eighth Street, in the city of New York, State of New York. Respondent Max Indig is the president of Lady Carole Coats, Inc., and as such he dominates and controls and is directly responsible for all of the acts and practices of said corporation. This respondent also maintains his office and principal place of business at 252 West Thirty-eighth Street, in the city of New York, State of New York.

PAR. 2. The respondents are now, and since April of 1947 they have been, engaged in the manufacture and in the sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939, of ladies' coats. The respondents maintain, and at all times mentioned herein they have maintained, a regular course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business, the respondents have manufactured for introduction into commerce, and have sold, transported, and distributed in commerce, as "commerce" is defined in the Federal Trade Commission Act and in the Wool Products Labeling Act of 1939, ladies' coats composed, in whole or in part, of wool, reprocessed wool, or reused wool, as those terms are defined in the Wool Products Labeling Act of 1939. Such products were therefore "wool products" within the intent and meaning of said act and were subject to the provisions thereof and to the rules and regulations promulgated thereunder.

Some of the coats so manufactured and sold by the respondents have been composed in whole of reprocessed wool or reused wool, but such coats, when sold and transported in commerce have not had on or affixed to them any stamps, tags, labels, or other means of identification, or any substitute therefor, showing them to be composed of these materials. On the contrary, these coats have had on or affixed to them stamps, tags, or labels showing their fiber content to be "100% wool."

Other coats so manufactured and sold by the respondents have been composed in part of reprocessed wool or reused wool and in part of viscose rayon, but these coats, when sold and transported in commerce, have not had on or affixed to them any stamps, tags, labels, or other means of identification, or any substitute therefor, showing them to

767

Order

be composed of these materials. On the contrary, these coats have had on or affixed to them stamps, tags, or labels showing their fiber content to be "100% wool."

Still other coats so manufactured and sold by the respondents have been composed in part of reprocessed wool or reused wool and in part of cotton, but these coats, when sold and transported in commerce, have not had on or affixed to them any stamps, tags, labels, or other means of identification, or any substitute therefor, showing them to be composed of these materials. On the contrary, these coats have had on or affixed to them stamps, tags, or labels showing their fiber content to be "100% wool."

PAR. 4. The wool products manufactured for introduction into commerce and sold, transported, and distributed in commerce by the respondents, as aforesaid, have been misbranded within the intent and meaning of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, in that each of said products has not had on or affixed to it a stamp, tag, label, or other means of identification, or a substitute therefor, showing (a) the percentage of the total fiber weight of said wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool where said percentage by weight of such fiber was 5 per centum or more; and (5) the aggregate of all other fibers; (b) the maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter; or (c) in the case of such wool product containing a fiber other than wool, the percentages by weight, in words and figures plainly legible, of the wool contents thereof.

CONCLUSION

The acts and practices of the respondents in the manufacture for introduction into commerce, and in the sale, transportation, and distribution in commerce, of wool products, which were misbranded as herein found, were in violation of the provisions of the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder, and were to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the respondents' answer

Order

46 F. T. C.

thereto, testimony and other evidence in support of and in opposition to the allegations of the complaint introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, and brief of counsel in support of the complaint (no brief having been filed on behalf of the respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Wool Products Labeling Act of 1939 and the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent Lady Carole Coats, Inc., a corporation, and its officers, and the respondent Max Indig, and said respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the manufacture for introduction, or introduction, into commerce, or the sale, transportation, or distribution in commerce, as "commerce" is defined in the aforesaid acts, of ladies' coats which contain, purport to contain, or in any way are represented as containing "wool," "reprocessed wool," or "reused wool," as those terms are defined in the Wool Products Labeling Act of 1939, or any other wool products, as that term is defined in said act, do forthwith cease and desist from misbranding such products by failing to affix securely to or place on each such product a stamp, tag, label, or other means of identification or a substitute therefor, showing in a clear and conspicuous manner:

(A) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding 5 per centum of said fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool where said percentage by weight of such fiber is 5 per centum or more; and (5) the aggregate of all other fibers;

(B) The maximum percentage of the total weight of such wool product, of any nonfibrous loading, filling, or adulterating matter;

(C) In the case of a wool product containing a fiber other than wool, the percentages by weight, in words and figures plainly legible, of the wool contents thereof;

Provided, That the foregoing shall not be construed to prohibit acts permitted by paragraphs (a) and (b) of section 3 of the Wool Products Labeling Act of 1939; *and provided, further*, That nothing contained in this order shall be construed as limiting any applicable provision of said act or of the rules and regulations promulgated thereunder.

767

Order

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with said order.

IN THE MATTER OF
REXALL DRUG COMPANY ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5465. Complaint, Oct. 9, 1946—Decision, Apr. 6, 1950

Where a corporation engaged in the manufacture of drugs, medicines, and other preparations and commodities usually sold in the modern drug store, and in the interstate sale and distribution thereof through retail stores owned and operated by its two wholly owned subsidiaries in many parts of the United States, and also through independently owned drug stores which secured from it a so-called franchise to operate under its trade name; and in supplying to said stores its publication listing its products, together with their wholesale prices and a suggested "usual retail price," and also, in the case of "two-priced" items, a smaller "minimum price"—

- (a) Represented in advertising matter which it prepared and furnished to its said stores in connection with its so-called occasional "One-Cent Sales," that two units of the advertised items might be purchased during such sales for the prices customarily and usually charged at the stores concerned for one unit plus 1 cent, through use of the term "One-Cent Sale" and through setting out therein prices of single units of each of the articles included, followed by an offer of two items for 1 cent more than the single unit price, and through stating that two items might be had for the price of one, plus 1 cent;

The facts being that the prices used by it in said advertising, in the case of its "two priced" items, were in all instances the higher or so-called "usual retail prices" listed for its products, as distinguished from the "minimum prices"; and in the case of its independent stores which adhered to the suggested "minimum prices" during off-sale periods, but sold on the basis of the higher or so-called "usual retail prices" during the "one cent sales," they thereby represented to the purchasing public contrary to fact, that the said higher "size" or "value" prices were their prices; and

Where said corporation, while making its practice, in connection with said "One-Cent Sales" of its subsidiary retailers, to refer only to its one-priced items in connection with statements of regular prices, and to segregate the two-priced items in a blocked-off section under the caption "Four-Day Specials—Not Regular Once-Cent Sales Items," in conjunction with which said subsidiary retailers showed "minimum prices" as the regular sale prices, together with the prices for which two might be purchased—

- (b) Falsely represented in one instance in which its subsidiary distributor featured in an advertisement some of said "Four-Day Specials" as "One-Cent Sale" items, that two units of the articles were being offered for the price customarily charged for one unit plus 1 cent, through representing the so-called "usual retail price" thereof as the regular price, when in fact said subsidiary regularly sold such items at the so-called "minimum price" between sales;